

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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| In the Matter of |) | |
| |) | |
| Amendment of Parts 2, 25, and 87 of the |) | |
| Commission's Rules to Implement Decisions |) | |
| from World Radiocommunication |) | ET Docket No. 02-305 |
| Conferences Concerning Frequency Bands |) | |
| Between 28 MHz and 36 GHz and to |) | |
| Otherwise Update the Rules in this Frequency |) | |
| Range |) | |
| |) | |
| Amendment of Parts 2 and 25 of the |) | RM-10331 |
| Commission's Rules to Allocate Spectrum For |) | |
| Government and Non-Government Use in the |) | |
| Radionavigation-Satellite Service |) | |

To: The Commission

REPLY COMMENTS

AirTV Limited (“AirTV”) submits these Reply Comments to the Commission’s Notice of Proposed Rule Making in the above-captioned proceeding.¹ Other interested parties commenting in this proceeding have submitted no arguments inconsistent with those raised by AirTV. In its Comments, AirTV strongly opposes the Commission’s proposal to remove from its rules the current Broadcast Satellite Service (“BSS”) S-band allocated in the United States, which has a worldwide allocation under ITU treaty. AirTV stated that such action would be anticompetitive and prevent the provision of AirTV’s services in the United States. AirTV emphasized that it is essential

¹ *Notice of Proposed Rule Making* in ET Docket No. 02-305, 67 Fed. Reg. 75,968 (Dec. 10, 2002) (“NPRM”).

for the Commission to support AirTV's intention to serve the public interest through development and implementation of its unique global DTA system in the United States. AirTV therefore asked that the Commission not change the current BSS allocation in the S-band.

In addition, AirTV asks the Commission to remove Footnote NG101 of the Allocations Table to allow a broader range of programming to commercial airline passengers.² Evolving technologies and increasing demand for data capacity mean using spectrum in ways that are more efficient and flexible. As AirTV noted in its Comments, the need for a regulatory environment that allows a broader panoply of service offerings in the BSS S-band has become clear, and the Commission in a number of instances has responded accordingly.³

AirTV demonstrated in its Comments that its proposed Direct-to-Aircraft ("DTA") entertainment and connectivity system for the global commercial airline market, operating in the 2520-2670 MHz band, will not cause unacceptable interference to present or future terrestrial services. This conclusion is based on a variety of studies performed by ITU working groups specifically assigned to address the BSS-terrestrial

² 47 CFR § 1.102, NG101. *See* AirTV Comments at 8.

³ The Commission already has recognized this change in the market, authorizing MDS and ITFS operators to provide two-way Internet access. *See, e.g., In the Matter of Amendment of Parts 1, 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licenses to Engage in Fixed Two Way Transmissions*, MM Docket 97-217, Report and Order, 13 FCC Rcd 9112 (1998); *see also, In the Matter of Amendment of Parts 1, 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licenses to Engage in Fixed Two Way Transmissions*, MM Docket 97-217, Report and Order on Further Reconsideration and Further Notice of Proposed Rulemaking, 65 Fed. Reg. 46,612 (Jul. 31, 2000).

service compatibility issue. Each of the studies offered a BSS PFD limit recommendation to ensure compatibility of the two services.

One study recommends retaining the PFD limits mandated in Table 21.4 of the ITU Rules and Regulations, and another proposes a small reduction (3 dB) in the Table 21.4 PFD limits over the elevation angle range of 25°-35°. ⁴ A third study supported by participants of WP-8F proposes reductions in the Table 21.4 PFD values, ranging from 4 dB at low elevations (0°-10°) to 9 dB at elevations greater than 30°. The Table 21.4 PFD mask may ultimately be retained, or the working groups may reach a compromise once there is consensus on the initial assumptions underlying the studies. In any event, AirTV's design will comply with all of these possible PFD levels, and there will be no unacceptable interference to terrestrial services in the United States.

Recently, the Administration of Canada completed its own internal study concerning compatibility of BSS with 2nd generation multipoint communications systems. The analysis addressed the impact on terrestrial base stations and customer premises equipment ("CPE") from BSS transmissions subject to the three PFD masks discussed above. The results of these analyses show that typical BSS transmissions subject to the PFD mask in ITU Table 21.4 produce a 0.1 dB worst-case excess interference into the base stations for 0° elevation and a worst case 1.9 dB excess into the CPE at 30° elevation. For both cases, at all other elevation angles, generic BSS transmissions meet or are below the minimum interference objective. This independent study by Canada

⁴ See ITU-R, Radiocommunication Group 9, Document 9/118(Rev. 1)(15 May 2002); see also ITU-R Working Party 8F, Document 8F/TEMP/293-E (4 June 2002); Industry Canada, Results of Preliminary Analysis, BSS (TV) Compatibility with 2nd Generation MCS/MDS in the Band 2520-2670 MHz, February 21, 2003, at 5.

further confirms that AirTV's transmissions, which are typically 10 dB below the PFD mask of Table 21.4, will produce no unacceptable interference in U.S. terrestrial systems.

As AirTV indicated in its Comments, the Commission's proposal would create a protectionist and anti-competitive market for AirTV's commercial airline services, counter to the WTO protocol that encourages international competition.⁵ This was surely not the intent of the Commission when it considered its proposal to remove the BSS S-band allocation in this proceeding.

⁵ See, e.g., WTO Web Page, *About the WTO* www.wto.org/wto/inbrief/infr00.htm ("WTO Web Page"). WTO members are bound to the obligations defined in the General Agreement on Trade in Services ("GATS"). GATS operates on three levels: the main text containing general principles; annexes establishing rules for specific sectors; and individual countries' specific market access commitments. WTO Web Page, *General Agreement on Trade in Services* <<http://www.wto.org/wto/services/services.htm>> See also http://www.wto.org/english/tratop_e/serv_e/telecom_e/telecom_highlights_commit_exe_mpt_e.htm#country (The United States "commits to open markets for essentially all basic telecom services . . . for all market segments . . ."). Exempted are DTH, DBS and DARS. Of course, AirTV's services are not in these bands. See also, *Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Satellites Providing Domestic and International Service in the United States*, Report and Order, IB Docket No. 96-111, 12 FCC Rcd 24094, 21012 (1997) (providing opportunities for non-U.S.-licensed satellites to deliver services in the United States would bring U.S. consumers the benefits of enhanced competition).

Accordingly, AirTV respectfully requests that the BSS allocation in the frequency band 2520-2670 MHz be retained and that, as discussed fully in its Comments, Footnote NG101 be removed.

Respectfully submitted,

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